

NOT FOR PUBLICATION

SEP 19 2006

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

GREGORIO C. FUNTANILLA, JR.,

Plaintiff - Appellant,

v.

R RAMOS, Correctional Sergeant; et al.,

Defendants - Appellees.

No. 05-15987

D.C. No. CV-03-01533-MCE

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, District Judge, Presiding

Submitted September 11, 2006 ^{**}

Before: PREGERSON, T.G. NELSON, and GRABER, Circuit Judges.

Gregorio C. Funtanilla, Jr., a California state prisoner, appeals pro se from the district court's order dismissing without prejudice his 42 U.S.C. § 1983 action after revoking Funtanilla's IFP status because he had "three strikes" under 28

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

U.S.C. § 1915(g). We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo a district court's interpretation of section 1915(g) and related legal conclusions, *Andrews v. King*, 398 F.3d 1113, 1118 (9th Cir. 2005), and we affirm.

The district court properly denied Funtanilla leave to proceed IFP because at the time he sought IFP status, he had filed more than three actions that had been dismissed as frivolous, malicious, or for failure to state a claim, and he did not allege he was in imminent danger of serious physical harm. *See* 28 U.S.C. § 1915(g); *Tierney v. Kupers*, 128 F.3d 1310, 1311-12 (9th Cir. 1997). Consequently, the district court properly dismissed Funtanilla's section 1983 action.

We grant Funtanilla's request to take judicial notice of this court's memorandum disposition in appeal no. 97-17117, *Funtanilla v. Schneider*.

We find Funtanilla's remaining contentions unpersuasive.

AFFIRMED.